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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/523,849	07/26/2005	Stefano Cavallari	U 015621-7	4414
140	7590	12/11/2006	EXAMINER	
LADAS & PARRY 26 WEST 61ST STREET NEW YORK, NY 10023			MAUST, TIMOTHY LEWIS	
			ART UNIT	PAPER NUMBER
			3751	

DATE MAILED: 12/11/2006

Please find below and/or attached an Office communication concerning this application or proceeding.

**Office Action Summary**

Application No.

10/523,849

Applicant(s)

CAVALLARI, STEFANO

Examiner

Timothy L. Maust

Art Unit

3751

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

**Period for Reply**

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

**Status**

- 1) ☒ Responsive to communication(s) filed on 26 July 2005.
- 2a) ☐ This action is **FINAL**. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

**Disposition of Claims**

- 4) ☒ Claim(s) 1-13 is/are pending in the application.
- 4a) Of the above claim(s) \_\_\_\_\_ is/are withdrawn from consideration.
- 5) ☐ Claim(s) \_\_\_\_\_ is/are allowed.
- 6) ☒ Claim(s) 1-6, 11 and 12 is/are rejected.
- 7) ☒ Claim(s) 7-10, 13 is/are objected to.
- 8) ☐ Claim(s) \_\_\_\_\_ are subject to restriction and/or election requirement.

**Application Papers**

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☒ The drawing(s) filed on 07 February 2005 is/are: a) ☒ accepted or b) ☐ objected to by the Examiner.  
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).  
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

**Priority under 35 U.S.C. § 119**

- 12) ☒ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☒ All b) ☐ Some \* c) ☐ None of:
1. ☒ Certified copies of the priority documents have been received.
  2. ☐ Certified copies of the priority documents have been received in Application No. \_\_\_\_\_.
  3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

\* See the attached detailed Office action for a list of the certified copies not received.

**Attachment(s)**

- |  |   |
|--|---|
| 1) <input checked="" type="checkbox"/> Notice of References Cited (PTO-892)            | 4) <input type="checkbox"/> Interview Summary (PTO-413)           |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948)   | Paper No(s)/Mail Date. _____                                      |
| 3) <input checked="" type="checkbox"/> Information Disclosure Statement(s) (PTO/SB/08) | 5) <input type="checkbox"/> Notice of Informal Patent Application |
| Paper No(s)/Mail Date <u>2/7/05</u> .  | 6) <input type="checkbox"/> Other: _____                          |

## **DETAILED ACTION**

### ***Specification***

The disclosure is objected to because of the following informalities: On page 5, line 5, "so" should be changed to - - to - -. Appropriate correction is required.

### ***Claim Rejections - 35 USC § 103***

The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

Claims 1-4, 11 and 12 are rejected under 35 U.S.C. 103(a) as being unpatentable over Nishino et al. in view of Castellari.

In regard to claims 1-4, the Nishino reference discloses a container "filling machine" (Figure 2) comprising a "carousel conveyor" (Figure 1), a "load cell" 58, a "gripper" 50 and "filling heads" 52, but doesn't disclose having a vertically adjustable plate for variously sized containers. However, the Castellari reference discloses another container filling and weighing machine (Figures 12 and 13) having a vertically adjustable plate (81, 82) to secure a container at its bottom and makes adjustments via screw 84 and rod 24 to accommodate variously sized bottles.

In regard to claim 11, see "jaws" 78 and spring 82 in Figure 3 of Nishino et al.

In regard to claim 12, see "rocker arms" 60 and load cell 58 in Figure 3 of Nishino et al.

Claims 5 and 6 are rejected under 35 U.S.C. 103(a) as being unpatentable over Nishino et al. as applied above and further in view of Kondo et al.

The Nishino et al. reference discloses the invention substantially as claimed (discussed supra), but does not disclose a horizontally moveable key and corresponding holes along the vertical rod. However, the Kondo et al. reference discloses another filling machine having a vertically adjustable plate and horizontally moveable key 66 and corresponding holes (41-44) for vertical adjustment. Therefore, it would have been obvious to one of ordinary skill in the art at the time the invention was made to substitute the moveable key arrangement for the screw arrangement on the Nishino et al. device as, for example, taught by the Kondo et al. reference wherein so doing would amount to mere substitution of one functional equivalent vertical adjustment arrangement for another within the same art and the selection of any of these arrangements would work equally well in the Nishino et al. device.

#### ***Allowable Subject Matter***

Claims 7-10 and 13 are objected to as being dependent upon a rejected base claim, but would be allowable if rewritten in independent form including all of the limitations of the base claim and any intervening claims.

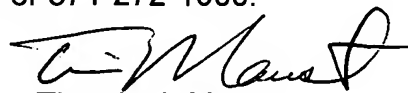
**Conclusion**

The prior art made of record and not relied upon is considered pertinent to applicant's disclosure. The Fischer, Peronek and Graffin references pertain to various filling machines, similar to Applicant's device.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Timothy L. Maust whose telephone number is (571) 272-4891. The examiner can normally be reached on Mon. - Thur. 6:30 - 5:00.

The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free). If you would like assistance from a USPTO Customer Service Representative or access to the automated information system, call 800-786-9199 (IN USA OR CANADA) or 571-272-1000.

  
Timothy L Maust  
Primary Examiner  
Art Unit 3751

Tlm  
11/30/06